

## INTERVENORS' MOTION FOR EVIDENTIARY HEARING

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and	)
WESTMORELAND ROSEBUD	)
MINING LLC and INTERNATIONAL	)
UNION OF OPERATING	)
ENGINEERS, LOCAL 400,	)
Intervenors.	)

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Intervenors Westmoreland Rosebud Mining LLC (“Westmoreland”) and International Union of Operating Engineers, Local 400 (“Union”) hereby move the Court for an evidentiary hearing to present testimony regarding material factual questions raised by Plaintiffs’ Motion for Preliminary Injunction.

1. On August 28, 2020, Plaintiffs filed their motion for preliminary injunction (Doc. No. 62) in this case to halt mining in Area F. Federal Defendants and Westmoreland’s responses<sup>1</sup> (Doc. Nos. 73-74) were filed on September 18, 2020, followed by Plaintiffs’ reply on October 9, 2020 (Doc. No. 92).

2. As set forth more fully in the attached brief in support, the motion for preliminary injunction, responses, and reply raise issues of material fact regarding the alleged irreparable harm, balance of harms, and public interest. Further, Plaintiffs fail to provide a sufficient factual basis to demonstrate standing in this case, which question, as a threshold jurisdictional matter, must be resolved by the Court before granting Plaintiffs’ request for extraordinary injunctive relief.

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<sup>1</sup> The Union joined in and adopted Westmoreland’s response on September 30, 2020 (Doc. 81).

3. In the interest of expediency and to ensure a full hearing of the parties' positions, Intervenor request an evidentiary hearing to support the Court's fact-finding regarding both standing and the balancing of the equities in the context of the motion for preliminary injunction.

4. Counsel for Intervenor have conferred with counsel for the Plaintiffs and Federal Defendants regarding this motion for an evidentiary hearing. Plaintiffs oppose. Federal Defendants take no position on Intervenor's motion for an evidentiary hearing so long as any such hearing does not include evidence regarding the likelihood of success on the merits. As resolution of this issue is confined to the administrative record, Intervenor have no plans to present extra-record evidence on this subject.

Accordingly, Intervenor respectfully move the Court to schedule an evidentiary hearing at the Court's earliest convenience for the presentation of testimony regarding Plaintiffs' alleged standing, Plaintiffs' alleged irreparable harm, the balance of harms, and the public interest, for purposes of determining whether Plaintiffs have met their burden to be entitled to a preliminary injunction.

Dated this 16th day of October, 2020.

*/s/ Hadassah M. Reimer*

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2020, I filed the foregoing document electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Hadassah M. Reimer

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